

LICENSE AGREEMENT

AGREEMENT made this day of , 1977, by and between the Boston Redevelopment Authority, a public body politic and corporate organized pursuant to Chapter 121B of the General Laws of the Commonwealth of Massachusetts, ("Authority") and the Massachusetts Bay Transportation Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts, ("MBTA").

WITNESSETH

WHEREAS, the Authority is the owner of certain property, known as South Station, located in Boston, Massachusetts in the Central Business District Urban Renewal Area, Project No. Mass. R-82; and

WHEREAS, pursuant to the terms of a Track License Agreement dated July 1, 1965, as amended on January 15, 1970, by and between the Authority and the Boston Terminal Corporation, said Boston Terminal Corporation could surrender certain areas when they were no longer needed for their operations; and

WHEREAS, as of February 24, 1971 the Boston Terminal Corporation surrendered Track Easement Parcels Nos. 4 and 5; and

WHEREAS, the MBTA is desirous of licensing Track Parcel No. 4 and a portion of Parcel No. 7 of the South Station property for the purposes of continuing commuter rail service and for construction storage respectively; and

WHEREAS, the licensing of said Track Easement Parcel No. 4 and a portion of Parcel No. 7 is a matter of public urgency and is necessary for the continuation of commuter rail service at South Station and to expedite the construction of the MBTA South Cove Tunnel Project.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the MBTA hereby agree as follows:

ARTICLE I

GRANT OF LICENSE

1.1 The Authority hereby grants to the MBTA the right and easement to construct three (3) new tracks, to remove three (3) tracks, to reconstruct seven (7) tracks and to construct appurtenances necessary for the construction, removal and reconstruction of said tracks on Track Easement Parcel 4, as outlined and more particularly described on attached Exhibit A, for the operation of its commuter rail service. The Authority further grants to the MBTA the right and easement to use for construction storage a portion of Parcel No. 7 outlined and more particularly described on said attached Exhibit A.

1.2 The Authority hereby grants to the MBTA the right and easement to maintain and use, incidental to said commuter rail service, electric power vaults and lines, steam lines, water lines and similiar facilities on those portions of land owned by the Authority described in Schedule II attached to said Track License Agreement between the Authority and the Boston Terminal Corporation which portions of land are therein referred to as "Utility Locations".

ARTICLE II

CONDITION OF PROPERTY

2.1 The Authority hereby disclaims any warranties of any nature, express or implied, as to the property which is the subject of the grant set forth in Article I hereof including, without limitation, warranties

as to the structural integrity of said property and any other warranty of any nature, express, implied or otherwise. The MBTA hereby accepts said property "as is".

ARTICLE III

TERM

3.1 The term ("Term") of this Agreement shall commence on the date hereof and terminate forty-eight (48) months following that date. Either party hereto may on thirty (30) days' prior notice to the other terminate this Agreement. No obligation on the part of the Authority, direct or indirect, is to be construed beyond this temporary month-to-month tenancy. Upon termination, the MBTA shall remove all goods and effects that are not the property of the Authority and shall peaceably yield up to the Authority the property described in Article I hereof in reasonably good order. In the event the MBTA fails to so yield up said property the MBTA shall reimburse the Authority for putting the property in reasonably good order.

ARTICLE IV

FEEES: COLLECTION AND APPLICATION OF RENTS

4.1 The MBTA covenants and agrees to pay fees to the Authority, at the Authority's address for notice set forth in Article VII or at such place or to such person as the Authority from time to time may designate by notice to the MBTA, commencing on the date hereof and thereafter throughout the Term, a total annual fee equal to Forty-Eight Thousand Dollars (\$48,000.00). Such fees shall be payable in equal monthly installments each in advance on the first day of each month during said Term commencing on the date of the execution of this Agreement. If the first day of the Term is a day other than the first day of a calendar

month or if the last day of the Term is a day other than the last day of a calendar month, then the MBTA shall pay a pro-rata portion of such monthly installments based upon one three-hundred and sixty-fifth ($1/365$) of the fee for each day of the month.

4.2 The MBTA covenants and agrees that during the Term and during all renewal terms hereof and such further time as the MBTA uses any part of the property described in Article I hereof that it shall pay when due all charges for sewer, water, gas, electricity, steam or other utility used on said property and that it shall use said property for no purpose other than the provision of commuter rail service and construction storage. It is recognized that there exists a License Agreement by and between the Authority and the MBTA, entered into on March 14, 1977, setting forth the MBTA's rights and obligations concerning its management of the South Station Headhouse. It is hereby specifically agreed that the MBTA, in computing the expenditure of \$285,000 per annum, allocated in said Agreement for Headhouse operations, shall allocate not more than 50% of the electricity, water or sewer bills for the combined Headhouse and Track Parcel usage for Headhouse Management operations. The MBTA further agrees to assume all responsibility for compliance with all municipal codes and ordinances.

ARTICLE V

5.1 The MBTA agrees to obtain insurance respecting its occupancy and use of the property granted hereby as follows: Third party Bodily Injury, not less than One Million Dollars (\$1,000,000.00) for injuries or death sustained by any one person, and not less than Two Million Dollars (\$2,000,000.00) for injuries or death sustained by persons for

each occurrence; Property Damage, not less than Five Hundred Thousand Dollars (\$500,000.00) for each occurrence; third party Personal Injury, not less than One Hundred Thousand Dollars (\$100,000.00) per person; and not less than Three Hundred Thousand Dollars (\$300,000.00), aggregate. The Authority shall be listed as a co-insured on all such Insurance policies and the MBTA shall furnish the Authority with a copy of the insurance certificate before occupying any property subject to this Agreement.

ARTICLE VI INDEMNIFICATION

6.1 The MBTA shall pay, and protect, indemnify and save harmless the Authority from and against any and all liabilities, losses, damages, or costs, expenses, including all reasonable attorneys fees and expenses of the Authority and the MBTA, related to causes of action, claims, demands or judgments of any nature whatsoever (except those that may result from the acts of the Authority) that may be imposed upon or incurred by it or asserted against the Authority by reason of (a) any accident, injury to, or death of any person or any damage to property occurring on the Property or any part thereof (except as may result from the acts of the Authority); (b) any use, non-use, condition or occupation of the property or any part thereof or resulting from the condition thereof; or (c) any failure by the MBTA to perform or comply with any of the terms herein contained or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the Property or any part thereof or the ownership, occupancy or use thereof.

ARTICLE VII

NOTICES

7.1 All notices given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by Registered or Certified mail, postage prepaid, return receipt requested, addressed, if intended for the Authority to it at City Hall, Boston, Massachusetts, attention of the Director, and if intended for MBTA to it at 50 Federal Street, Boston, Massachusetts.

ARTICLE VIII

MISCELLANEOUS

8.1 This Agreement may not be assigned by the MBTA unless to the United States of America without the prior consent of the Authority, and, in such event, the MBTA shall remain fully liable and bound by every provision hereof.

8.2 Each of the parties hereto shall consent to, execute and deliver such other and further documents as may be reasonably required by the other so long as such other and further documents are consistent with the terms and provisions hereof, shall not impose additional obligations on any party hereto and shall be in furtherance of the intent and purposes of this Agreement.

8.3 No assent or waiver, express or implied, by any party to any breach of or default in any term, covenant or condition which this Agreement requires to be performed or observed by any other party shall constitute a waiver of or assent to any succeeding breach or for a default in the same or any other term, covenant or condition hereof.

8.4 The execution and delivery of this Agreement by the Authority is subject to the receipt of all consents and approvals required by applicable law, and in the event that either the MBTA or the Authority

reasonably determines that any such consent or approval has not been obtained, it may terminate this Agreement immediately upon thirty days notice to the other.

8.5 The parties acknowledge that Federal funds will be used to fund this Agreement subject to the prior approval and concurrence of the Urban Mass Transportation Administration (UMTA), U. S. Department of Transportation.

8.6 The parties to this Agreement shall permit the authorized representatives of the MBTA, the U. S. Department of Transportation (UMTA) and the Comptroller General of the United States to inspect and audit all data and records of the parties relating to their performance under this Agreement.

8.7 The MBTA, UMTA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Authority which are directly pertinent to this Agreement for the purpose of making audit, examination excerpts, and transcriptions.

8.8 In connection with the execution of this Agreement, the Authority shall not discriminate against any employee or application for employment because of race, religion, color, sex or national origin. The Authority shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates or pay, or other forms of compensation; and selection for training, including apprenticeship.

8.9 In connection with the performance of this Agreement, the Authority will assure that minority business enterprises have the maximum practical opportunity to compete for further contract work made pursuant to this Agreement, and will cooperate with the MBTA in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises.

8.10 No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

8.11 No member, officer, or employee of the MBTA during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or this proceeds thereof.

8.12 The Authority agrees to fully cooperate with the MBTA to permit the MBTA's project of extension of its rapid transit system to proceed as planned.

8.13 By mutual agreement between the parties, the duration of this Agreement may be extended by Supplement thereto.

IN WITNESS WHEREOF, parties hereto have executed this Agreement under seal on the day and year first set forth above.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

Charles J. Speleotis
Chief General Counsel

By _____
Robert F. Walsh
Director

Approved as to form

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

J. H. Elcock
General Counsel

By _____
Robert R. Kiley, Chairman

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT F. WALSH, DIRECTOR

SUBJECT: CENTRAL BUSINESS DISTRICT
URBAN RENEWAL AREA, MASS R-82
SOUTH STATION TRACK LICENSE AGREEMENT

This memorandum requests that the Boston Redevelopment Authority enter into a Track License Agreement with the Massachusetts Bay Transportation Authority with regard to Track Parcel No. 4 and a portion of Track Parcel No. 7 which are located on South Station property owned by the Authority as part of the Central Business District Urban Renewal Area, Mass R-82.

The proposed Agreement would be substantially in the form of the Agreement annexed hereto.

An appropriate vote follows.

VOTED: That the Director be and hereby is authorized to execute and deliver a License to the Massachusetts Bay Transportation Authority for temporary use of the Authority-owned premises at South Station as a site for railroad track construction and construction storage subject to a 30-day notice to vacate the premises; said License is to be for the consideration of forty eight thousand (\$48,000.00) dollars per annum. Said License contains the express provision that no obligation on the part of the Authority direct or indirect is to be construed beyond this temporary month to month tenancy. Said License also contains the express provision that the Licensee agrees to assume all maintenance expenses including sewer and water charges and that the Licensee will have the complete responsibilities for compliance with all municipal codes and ordinances. Said License further provides that the Licensee shall obtain liability insurance naming the Authority as co-insured and that the Licensee has agreed to indemnify and hold harmless the Authority from any liability and/or damage resulting from the Licensee's use of the premises. Said License includes such other terms and conditions as the Director deems proper and in the best interest of the Authority.

